CLAIM AMENDMENTS

Claims 7-9, 19-24, 27-29, and 55 were pending at the time of the Action.

Claims 7 and 19 are amended in this Response.

Claims 57-63 are new.

Accordingly, claims 7-9, 19-24, 27-29, 55 and 57-63 are now pending.

The listing of claims below will replace prior versions of claims in the application:

Claims 1-6 are CANCELED

7. (CURRENTLY AMENDED) A method for measuring bandwidth between two entities on a communications network, the method comprising:

via a communications network, receiving at least a pair of non-compressible packets having measurable characteristics;

calculating bandwidth based upon, measurable characteristics of at least the pair of non-compressible packets; and

determining if the calculated bandwidth is outside a given range of believability for calculated bandwidth;,

if the calculated bandwidth is determined to be outside the given range of believability~~, then:~~

disregarding the calculated bandwidth; and

querying a modem of an entity about a bandwidth setting of the modem.

8. (PREVIOUSLY AMENDED) A method as recited in claim 7, wherein the queried modem is a modem of a receiving entity.

9. (PREVIOUSLY AMENDED) A method as recited in claim 7, wherein the queried modem is a modem of a sending entity.

Claims 10-18 are CANCELED.

19. (CURRENTLY AMENDED) A method for measuring bandwidth between two entities on a dynamic network, the method comprising:

via a dynamic network, sending at least a pair of non-compressible packets, the dynamic network being a communications network having no assurance that both packets of a pair of identical packets are handled in an identical manner while in transit on the communications network;

receiving a bandwidth ~~calculation~~ value determined based upon measurements related to at least the pair of non-compressible packets, and consideration of a given range of believability related to calculated bandwidth;

selecting a file formatted for a given bandwidth that is equal to or less than the bandwidth ~~calculation;~~ value; and

sending the selected file via the dynamic network.

20. (PREVIOUSLY PRESENTED) A method as recited in claim 19, wherein each of the pair of non-compressible packets is approximately fragmentation-avoidance size.

21. (PREVIOUSLY PRESENTED) A method as recited in claim 19, wherein each of the pair of non-compressible packets is highly entropic.

22. (PREVIOUSLY PRESENTED) A method as recited in claim 19, wherein each of the pair of non-compressible packets is formatted for TCP.

23. (PREVIOUSLY PRESENTED) A method as recited in claim 19, wherein each of the pair of non-compressible packets is formatted for UDP.

24. (PREVIOUSLY PRESENTED) A method as recited in claim 19, wherein the packets of the pair are equivalent in size.

25. (CANCELED)

26. (CANCELED)

27. (PREVIOUSLY PRESENTED) A method as recited in claim 19, before the sending, further comprising selecting one of the pair of non-compressible packets from a set of differing non-compressible packets.

28. (PREVIOUSLY PRESENTED) A method as recited in claim 19, before the sending, further comprising generating the pair of non-compressible packets.

29. (ORIGINAL) A computer-readable medium having computer-executable instructions that, when executed by a computer, performs the method as recited in claim 19.

Claims 30-54 are CANCELED.

55. (PREVIOUSLY PRESENTED) A method as recited in claim 19, wherein the dynamic network is the Internet.

56. (CANCELED)

57. (NEW) A method as recited in claim 19, wherein the bandwidth value received is within the given range of believability related to calculated bandwidth.

58. (NEW) A method, comprising:

via a communications network, receiving at least a pair of non-compressible packets having measurable characteristics;

calculating bandwidth based upon, measurable characteristics of at least the pair of non-compressible packets; and

determining if the calculated bandwidth is outside a given range of believability for calculated bandwidth,

if the calculated bandwidth is determined to be outside the given range of believability:

setting a bandwidth to a low-believability threshold if the calculated bandwidth is below the given range of believability for calculated bandwidth; and

setting a bandwidth to a high-believability threshold if the calculated bandwidth is above the given range of believability for calculated bandwidth.

59. (NEW) A method as recited in claim 58, wherein each of the pair of non-compressible packets is highly entropic.

60. (NEW) A method as recited in claim 58, wherein each of the pair of non-compressible packets is formatted for TCP.

61. (NEW) A method as recited in claim 58, wherein each of the pair of non-compressible packets is formatted for UDP.

62. (NEW) A method as recited in claim 58, wherein the packets of the pair are equivalent in size.

63. (NEW) A method as recited in claim 58, wherein the given range of believability for calculated bandwidth is 24.4 Kbps – 1 Mbps, the low-believability threshold is 24.4 Kbps and the high-believability threshold is 1 Mbps.